1947

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File No. B Criminal Law (Bombay Amdt) Ordinance. 47.

Legal B DEPARTMENT BRANCH

Subject:— Criminal Law (Bombay Amendment) Ordinance 1947

P 10 F

Ordinance I of 1947

File No. B. Criminal Law (Bombay Amdt) Ordinance 1947

Stl. Sectt. Slip 24 B. e.

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MRP.
16/5/50.

D.O.No.G.S.234.

Government House,
BOMBAY.

Urgent.

20th January, 1947.

CONFIDENTIAL.

Dear Vyas,

You will have heard by now that Government is proposing to promulgate a Special Criminal Courts Ordinance providing for accelerated trial of riot cases and for enhancing certain penalties. Since this Ordinance would, if it had been a Bill, have had to be reserved for the consideration of the Governor-General on account of its repugnancy to existing Indian laws it cannot be promulgated without the "instructions" of the Governor-General under section 88(1)(b) of the Constitution Act.

I am wondering whether in order to accelerate matters I could not apply for the Governor-General's "instructions" in advance of the final framing of our Ordinance. It occurs to me that if I could send a memorandum to Godbole setting out the results which the Ordinance is intended to achieve it would perhaps be legally open to the Governor-General to "instruct" the Governor to issue an Ordinance on these lines in advance of the preparation of the measure itself. Could you kindly advise me on this point? If you agree, I wd. write accordingly. In that case, could you kindly send me a copy of the memorandum of objects wh: you will have received from H.D.?

Yours sincerely,

Sd. D. Symington.

D.V.Vyas, Esquire, I.C.S.,
Secretary to Government, Legal Department and
Remembrancer of Legal Affairs,
BOMBAY.

MRP.
16/8/56.

D.O.No.27-Confl.

Legal Department,
Bombay Castle, 20th January 1947.

Your D.O. No.G.S.-234, dated the 20th January 1947.

The view taken by you in paragraph 1 that the proposed Ordinance cannot be promulgated without the instructions of the Governor General is correct.

I agree that the course of action suggested by you in paragraph 2 would expedite matters.

A copy of the Statement to the proposed Ordinance received from the Home Department is appended.

Sd. D.V.Vyas

D. Symington, Esquire, ~~Sxx~~ C.I.E., I.C.S.,
Secretary to the Governor of Bombay,
Bombay.

MRP.
16/5/56.

Office of the R.L.A.

A revised draft Ordinance is sent herewith.

2. The Ordinance seeks to enhance punishment for certain offences which fall under the Indian Penal Code, and also seeks to change the procedure included in the Code of Criminal Procedure at the date of the passing of the Government of India Act, 1935. As Criminal Law including matters included in the Indian Penal Code and Criminal Procedure Code fall under entries 1 and 2 respectively in the Concurrent Legislative List in the Seventh Schedule to the Government of India Act, 1935, a Bill were containing provisions similar to those in the Ordinance would have been required to be reserved for consideration of the Governor General under sub-section (2) of section 107 of the Government of India Act. The Ordinance in question, therefore, falls under proviso (b) to sub-section (1) of section 68 of the Government of India Act, 1935, and cannot be promulgated without instructions from the Governor General acting in his discretion.

3. Clause 3.- It is not proper to appoint Assistant Sessions Judges of two years' standing to preside over Special Courts in the mofussil. Since in Bombay a High Court Judge is to preside over such Court, it is but proper that the highest available Judge in the mofussil should preside over a Special Court constituted in the mofussil. The reference to Assistant Judge has therefore been deleted.

4. Clause 5(1).- The mention in d.O. draft clause 4(1) that a Special Judge shall follow the procedure prescribed by the Code of Criminal Procedure provided for the trial of warrant cases by Magistrates has been deleted. This procedure is more cumbersome than the procedure for the trial of cases before a Court of Session. This will both be simpler and quicker. In view of the provision made in clause 5(2), on the lines of clause 4(2)

of

of the H.D. draft, that the provision of the Code of Criminal Procedure shall apply to the proceedings of a Special Judge and that his Court shall be deemed to be a Court of Session, no further provision is necessary.

5. Clause 6 has been split up into two clauses, namely, 7 and 8. The intention appears to be to pass a sentence of death only in respect of offences for attempt to murder and that in other cases the accused shall be transported for life. This has been made clear in clause 7.

6. Clause 9.- A review in cases of sentences of death passed by Special Court should be by two Judges of the High Court. The High Court will resent the power taken to the Executive to nominate any two Judges for the purpose of review. Nor does it appear necessary. The reference to nomination by Provincial Government has therefore been deleted.

7. A new clause 13 providing that trials shall not be by Jury or with the aid of Assessors has been included in the Ordinance. This seems to be the intention of Government.

8. A copy of the D.O.letter from the Secretary to the Governor and reply thereto regarding the necessity of obtaining the instructions of the Governor General for the promulgation of the Ordinance are sent herewith.

Sd. D.V.Vyas

Remembrancer of Legal Affairs.

U.R.to H.D.,No.33-Confl., dated the 23rd January 1947.

HRP.
16/6/56.

Office of the R.I.A.

Para.2 of Secretary,H.D's note at p.5.- The words "owing to injury" have been omitted from clause 6.

2. Clause 9 has also been deleted, and subsequent clauses renumbered.

3. Original clause 11 which now becomes 10 has been recast to provide for appeal and revision. No provision is necessary on the lines of the portion marked 'A' in para.3 of Secretary, H.D.'s note at p.5, since under section 374 of the Criminal Procedure Code sentences of death passed by a Court of Session cannot be executed unless confirmed by the High Court. And this provision will apply to death sentences by Special Judges in view of the provision made in clause 5(2) the last sentence of which provides that the Court of the Special Judge shall be deemed to be a Court of Session.

Sd. D. V. Vyas,
Remembrancer of Legal Affairs.

J.R.to H.D.,No.43-Confl., dated the 1st February 1947.

HRP.
16/5/56.

Ordinances.

An Ordinance to enable Government to adopt more effective measures to deal with disturbed conditions in certain parts of the Province of Bombay.

GOVERNMENT OF BOMBAY.

Legal Department.

Resolution No.1182.

Bombay Castle, 5th February 1947.

Memorandum from the Home Department, dated the 5th February 1947 - Transferring for necessary action, the papers relating to an Ordinance to enable Government to adopt more effective measures to deal with disturbed conditions in certain parts of the Provinces of Bombay.

Resolution:- The Ordinance with the Statement should be forwarded to the Manager, Government Central Press, Bombay, for publication in the Bombay Government Gazette, dated the 5th February 1947, as Ordinance No.I of 1947.

2. The Ordinance and the Statement should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette dated the 8th February 1947.

3. The dates of the various publications should be reported to the Secretary to the Bombay Legislative Assembly, the Secretary to the Bombay Legislative Council and the Legal Department.

By order of the Governor of Bombay,

Sd. D.D.Pandit,
Assistant Secretary to Government.

To

The Manager, Government Central Press, Bombay (with the Ordinance and the Statement and with a request that 200 Gazette copies of the Ordinance and the Statement may be forwarded to the Secretary to the Bombay Legislative Assembly and 40 copies to the Secretary to the Bombay Legislative Council, for distribution to the Members of the Bombay Legislative Assembly and the Council, respectively, and 25 copies for the use of the Legal Department),

The Secretary to the Governor,
The Home Department,
The Oriental Translator to Government,
The Secretary to the Bombay Legislative Assembly,
The Secretary to the Bombay Legislative Council,
The Director of Publicity,

} with a copy of the Ordinance and the Statement.

MRP
16/5/56.

No.1239.

Legal Department,

Bombay Castle, 6th February 1947.

From

D. V. Vyas, Esquire, I.C.S.,

Secretary to the Government of Bombay.

To

The Secretary to the Bombay Legislative Assembly.

Subject:- The Criminal Law (Bombay Amendment) Ordinance, 1947.

Sir,

I am directed to forward herewith a copy of the Criminal Law (Bombay Amendment) Ordinance, 1947, promulgated by His Excellency the Governor of Bombay under section 88 of the Government of India Act, 1935, with a request that the said Ordinance may be laid before the Bombay Legislative Assembly as required by clause (a) of sub-section (2) of the said section 88.

Yours obedient servant,

Sd. B.D.Pandit,

For Secretary to Government.

MRP.
16/5/56.

No.1240.

Legal Department,

Bombay Castle, 6th February 1947.

From

D.V. Vyas, Esquire, I.C.S.,
Secretary to the Government of Bombay.

To

The Secretary to the Bombay Legislative Council.

Subject:- The Criminal Law (Bombay Amendment) Ordinance, 1947.

Sir,

I am directed to forward herewith a copy of the Criminal Law (Bombay Amendment) Ordinance, 1947, promulgated by His Excellency the Governor of Bombay under section 88 of the Government of India Act, 1935, with a request that the said Ordinance may be laid before the Bombay Legislative Council as required by clause (a) of sub-section (2) of the said section 88.

Your obedient servant,

Sd. B.D.Pandit,
For Secretary to Government.

MMP.
16/8/56.

No.1677/5.

Home Department,
Bombay Castle, 6th February 1947.

NOTIFICATION.

Criminal Law (Bombay Amendment) Ordinance 1947 (I of 1947).

Whereas the Government of Bombay is satisfied of the existence of danger to the public peace in the Greater Bombay,

Now, therefore, in exercise of the powers conferred upon it by sub-section (3) of section 1 of the Criminal Law (Bombay Amendment) Ordinance, 1947 (I of 1947), the Government of Bombay is pleased to declare that the said Ordinance shall come into force in the Greater Bombay with effect from the date of this notification.

By order of the Governor of Bombay,

G.G.DHEWE,
Secretary to the Government of Bombay,
Home Department.

No.1677/5-A.

Home Department,
Bombay Castle, 6th February 1947.

Copy forwarded with compliments for information to:-

The Registrar, High Court, Appellate Side, Bombay,
The Chief Presidency Magistrate, Bombay,
The Commissioner of Police, Bombay,
The Remembrancer of Legal Affairs.

Sd. Miranda
For Secretary to the Government of Bombay,
Home Department.

ITP.
16/5/36.